

## **REMARKS**

Entry of the foregoing amendment is respectfully requested. The Amendment is believed to place the application in condition for allowances and is, therefore, appropriate under Rule 116. The Amendment does not raise any new issues and, thus, does not require an additional search by the Examiner. The issues raised by the amended claim 4 are the same issues raised by the presently pending claims 1 and 4.

The Amendment was not earlier presented because applicant did not appreciate the grounds for rejection until they were repeated in the final Office Action.

By the present amendment, claim 1 is canceled, and claims 2-4 are amended.

Based on the foregoing amendments and the following remarks, the application is deemed to be in condition for allowance and action to that end is respectfully requested.

The Examiner rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by Wagner et al., U.S. Patent No. 5,903,462 (Wagner). The Examiner further rejected claims 1, 4 and 24 under 35 U.S.C. § 102(b) as being

anticipated by Mallick et al., U.S. patent No. 4,051,351 (Mallick). Claims 9-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagner in view of Schmitzer et al., Publication US 2003/0006050 (Schmitzer). It is respectfully submitted that claims 2-24 are patentable over the cited references.

Specifically, claim 4 recites at least one discriminating means for differentiating between impulses caused by the one of a setting and a striking impulse and other acceleration forces. No such discriminating means is disclosed or suggested in the prior art.

Considering the prior art, Wagner discloses a digital-to-analog converter (310) that only converts a programmed torque value stored in non-volatile memory into an analog version (col. 6, lines 60-66). The digital to analog converter (310) is not a discriminating means that fulfills the function of discriminating between acceleration forces caused by a setting process and other acceleration forces.

Mallick discloses that “the calculation of the performance parameters of energy and virtual displacement may also be performed using analog integrators or a programmed central processor, such as a microprocessor” (col. 13, lines 44-49). First of all, the microprocessor is not part of the pneumatic riveting gun

(12) as can be concluded from Fig. 3, and second the microprocessor is not used to discriminate between acceleration forces caused by a setting impulse and other acceleration forces. It also would not make any sense to use the microprocessor as a discriminating means for different acceleration forces, as Mallick does not measure acceleration forces  $a(t)$  of the tool itself but rather calculates the total energy that is delivered to the piston.

Neither Wagner nor Mallick discloses or suggests discriminating means for differentiating between impulses caused by the setting or striking impulse or by other acceleration forces.

In view of the above, it is respectfully submitted that neither Wagner nor Mallick anticipates or makes obvious the present invention, as defined by claim 4, and claim 4 is patentable over both Wagner and Mallick.

The secondary references, including Schmitzer, likewise do not disclose discriminating means as recited in claim 4.


Claim 2, 3 and 5-24 depend on claim 4, directly or indirectly, and are allowable for being dependent on an allowable subject matter.

## CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

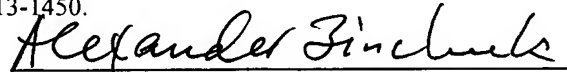


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This correspondence is being deposited with the United States Postal Service on December 7, 2005 in an envelope as "Express Mail Post Office to Addressee" Mailing Label Number **ER 842 053 730 US** addressed to the Honorable Commissioner for Patents, Alexandria, VA 22313-1450.



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